

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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)
Diana Brahas) FILED: JUNE 17, 2008
and Angel Gonzalez Jr.,) 08CV3483
A 97-994-558) JUDGE PALLMEYER
Petitioner,) MAG. JUDGE NOLAN
v.) J. N.
)
)
)
Ruth Dorochoff, District Director,)
USCIS; Commissioner USCIS;)
and Michael Chertoff,)
Director of Homeland Security,)
)
Respondents)
)
)

COMPLAINT FOR WRIT OF MANDAMUS

NOW COMES the Plaintiffs, Diana Brahas and Angel Gonzalez Jr., by and through their attorney, Isuf Kola of Kola & Associates, Ltd and state as follows:

STATEMENT OF ACTION

1. This action is brought to compel action on an Application to Adjust Status (“I-485”) properly filed with the United States Citizenship and Immigration Service (USCIS) in Chicago by the Plaintiffs. To the Plaintiffs’ detriment, Defendants have failed to adjudicate the application.

PARTIES

2. The Plaintiffs are husband and wife. Diana Brahas filed an I-485 application on December 2, 2003, seeking to adjust status based on her marriage to Angel Gonzalez Jr.
3. The Defendant Michael Chertoff, Director of Homeland Security, is being sued in his official capacity only.
4. Defendant Ruth Dorochoff, the District Director of the Chicago USCIS, is being sued in her official capacity only. The District Director is charged with supervisory authority over all of the Chicago USCIS operations and USCIS agents and officers acting in their official capacities

JURISDICTION

5. This Court has original jurisdiction to hear both civil actions under the law of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. Section 1331; 28 U.S.C. Section 1261. This Court also has jurisdiction to grant declaratory relief under 28 U.S.C. Section 2201-2202.
6. This action is brought to compel the defendants to perform the duties arising under the laws of the United States.
7. This Court has jurisdiction to hear all actions arising from claims that an agency or officer or employee of a government agency failed to act in its official capacity and the person to whom the duty was owed suffered a

legal wrong. 5 U.S. C. Section 702.

8. This action invokes the Plaintiffs' right of due process under the fifth amendment of the United States Constitution, over which jurisdiction is conferred on this Court.

9. This action is brought due to the repeated failure of the Defendants to perform their duty to adjudicate the Plaintiffs' I-485 application within a reasonable amount of time. Failure to adjudicate said application resulted in harm to the Plaintiffs.

10. Jurisdiction over adjudication matters is conferred of federal courts when the USCIS refuses to adjudicate I-485s.

11. The Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA") does not divest this Court of Jurisdiction because the Plaintiffs are not seeking a review of a denial; they are seeking to have their adjustment application adjudicated, which is among the duties conferred on the Defendants by Congress. Ildir. V. INS, 166 F. Supp. 2d 1250, 1256 (N.D.ILL 2001).

12. Venue lies with this Court under 218 U.S.C. Section 1291(e). This is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to the Plaintiffs' claim occurred.

13. Plaintiff's Application for Adjustment of Status was properly filed and, to Plaintiff's knowledge, remains pending with the Chicago USCIS District Director.

EXHAUSTION OF REMEDIES

14. Plaintiffs have exhausted all administrative remedies. Plaintiffs attended an interview for adjustment of status based on the I-485 application. Said interview was held before an Adjudicator on December 14, 2004.

15. On December 14, 2004 the Defendant's approved the couple's I-130 Petition for Alien Relative according to the oral statement of the officer. The officer indicated that the approval of the I-485 was pending a background check.

CAUSE OF ACTION

16. Plaintiff's I-485 application was filed on December 2, 2003 with the USCIS.

17. Plaintiffs' were interviewed on December 14, 2004 (See Exhibit A). During said interview the Plaintiffs submitted numerous documents to the USCIS proving their valid, bona fide marriage, including pictures of family events, proof of joint bank accounts and proof of joint residence.

18. Defendants have had every opportunity to adjudicate Plaintiffs' application.

19. Plaintiffs have been deeply prejudiced by the failure of the Defendants to act in accord with their legal duties.

a. Plaintiffs have been barred from traveling overseas. Plaintiffs are not

eligible to file for advanced parole or permission to leave the country.

- b. Plaintiffs have to expend money every year in order to renew Mrs. Brahas's employment authorization permission.
- c. Plaintiffs have been denied the opportunity to have a final resolution of their applications. Specifically, Plaintiffs have not known whether Mrs. Brahas will be permitted to stay in the United States.

20. Defendant's delay in processing the application has deprived the Plaintiffs of their right to due process under the law as provided by the fifth amendment of the United States Constitution.

21. Defendants, in violation of the Administrative Procedure Act, 5 U.S.C. Section 701, are unlawfully withholding and unreasonably delaying action on Plaintiffs' application and have subsequently failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiffs' case.

PRAYER

WHEREFORE, Plaintiffs request that this Honorable Court enter an order:

- (a) Requiring Defendants to adjudicate Plaintiffs' applications for Adjustment of Status (I-485).
- (b) Awarding Plaintiffs reasonable attorney's fees under 28 U.S.C. Section 2412 for failure to perform their duties within a reasonable amount of time; and

(c) Granting such other relief at law and in equity as justice may so require.

Respectfully submitted,
Kola & Associates, LTD

By: /s/ Isuf Kola
Isuf Kola

Kola & Associates, LTD
800 Roosevelt Rd. Building B Suite 110
Glen Ellyn, IL 60137
Tel. 630-790-6100
Fax. 630-790-6104

Certificate of Service

I, undersigned attorney, hereby certify that on June 17, 2008, I electronically filed the foregoing with the clerk of the U.S. District Court for the Northern District of Illinois by using the CM/ECF system which will send notification of such filing to the following:

Office of the Assistant U.S. Attorney
U.S. Department of Justice
219 S. Dearborn 5th Floor
Chicago, IL 60604

By: /s/ Isuf Kola
Isuf Kola

Kola & Associates, LTD
800 Roosevelt Rd. Building B Suite 110
Glen Ellyn, IL 60137
Tel. 630-790-6100
Fax. 630-790-6104

MAG. JUDGE NOLAN

THE UNITED STATES OF AMERICA

REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW			NOTICE DATE October 04, 2004
CASE TYPE FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS			
APPLICATION NUMBER MSC0408012073	RECEIVED DATE December 02, 2003	PRIORITY DATE December 02, 2003	AB# A 097 994 558
APPLICANT NAME AND MAILING ADDRESS DIANA M BRAHAS 6200 N SACRAMENTO APT 3A CHICAGO IL 60659		PAGE 1 of 1	
PLEASE COME TO: U.S. Citizenship and Immigration Services 230 S. DEARBORN STREET KLUCZYNSKI FEDERAL BLDG 2ND FLOOR CHICAGO IL 60604			

AT: 07:45 AM

You are hereby notified to appear for the interview appointment, as scheduled above, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485). **Failure to appear may result in the denial of your application.**

Who should come with you?

- If your eligibility is based on your marriage, your husband or wife must come with you to the interview.
- If you do not speak English fluently, you should bring an interpreter who is neither a relative nor an interested party in your application.
- Your attorney or authorized representative may come with you to the interview.

NOTE: Every adult who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.

What MUST you bring?

- Bring this Interview Notice.
- Bring your Government-issued photo identification.
- Bring all your Passports and any other documents, including your Arrival/Departure Document (Form I-94), used to enter the United States.
- Bring your Birth Certificate.
- Bring all documentation establishing your eligibility for Lawful Permanent Resident status (*see below: "What else should you bring?"*).
- Bring all immigration-related documentation ever issued to you.
- Bring both originals and photocopies of all supporting documents. Otherwise, we may keep your originals for our records.
- Bring a certified English translation for each document not in English. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.

What else should you bring?

- Bring any Employment Authorization card or paper, and any Authorization for Advance Parole (Form I-512) ever issued to you.
- Bring your petitioner's Birth Certificate *and* your petitioner's evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have children, bring a Birth Certificate for each of your children.
- If you are married, bring your Marriage Certificate.
- If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:
 - Your spouse's Birth Certificate *and* your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;
 - If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse;
 - Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you;
 - Supporting evidence of your relationship, such as joint financial statements, joint legal documents, joint insurance policies, and photos.
- If you have not already submitted it, bring a completed medical examination (Form I-693) *and* vaccination supplement in a sealed envelope.
- Bring your Federal Income Tax returns *and* W-2's, or certified IRS printouts, for the past 3 years.
- If you are employed, bring letters from each of your current employers on company stationery, verifying your current rate of pay *and* average weekly hours, *and* bring your pay stubs for the past 2 months.
- Bring completed Affidavit(s) of Support (Form I-864), with all required evidence, including the following for each of your sponsors:
 - Federal Income Tax returns *and* W-2's, or certified IRS printouts, for the past 3 years;
 - Letters from each current employer on company stationery, verifying current rate of pay *and* average weekly hours, *and* pay stubs for the past 2 months;
 - Evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have ever been arrested, for each arrest, bring the related Police Report and the original or certified Final Court Disposition, even if the charges have been dismissed or expunged. If no court record is available, furnish a letter from the court with jurisdiction indicating this.

PLEASE MAKE EVERY EFFORT TO KEEP YOUR APPOINTMENT, even if you do not have all the listed items. If an emergency, such as the hospitalization of a close relative, prevents you from appearing, call the Citizenship and Immigration Services (CIS) customer service as soon as possible. Please be advised that rescheduling will delay processing, may require some steps to be repeated, and will affect your eligibility for other immigration benefits while this application is pending.

If you have questions, please call CIS customer service at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).

APPLICANT COPY

